

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | |
| FM Table of Allotments, |) | MM Docket No. 02-374 |
| FM Broadcast Stations. |) | RM-10598 |
| (Douglas and Tombstone, Arizona, |) | |
| and Santa Clara, New Mexico) |) | |
| |) | |
| |) | |

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: April 9, 2003

Released: April 11, 2003

By the Assistant Chief, Audio Division:

1. Before the Audio Division is the *Notice of Proposed Rule Making and Order to Show Cause ("Notice/OSC")*,¹ issued in response to a petition filed on behalf of Cochise Broadcasting, LLC ("Petitioner"), licensee of Station KCDQ, Channel 237A, Douglas, Arizona, proposing the substitution of Channel 237C for Channel 237A at Douglas, the reallocation of Channel 237C to Tombstone, Arizona, as that community's first local aural service, and modification of its license accordingly. Additionally, to accommodate its proposal, Petitioner also requested the substitution of Channel 236C1 for Channel 237C1 at Santa Clara, New Mexico, at the present transmitter site of Station KNUW(FM), and modification of the license of Station KNUW(FM) to reflect the new channel. Petitioner filed supporting comments. Duran-Hill, Inc. ("Duran-Hill"), the current licensee of Station KNUW(FM), also filed responsive comments to the *Notice/OSC*.² No additional comments were received. For the reasons discussed below, we are granting the Petitioner's request.

2. Petitioner invokes the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.³ This provision applies as the proposal to allot Channel 237C at Tombstone, Arizona, is mutually exclusive with Station KCDQ's current allotment of Channel 237A at Douglas. The communities are located 64.2 kilometers apart whereas Section 73.207(b)(1) of the Commission's Rules specifies a required minimum distance

¹ *Douglas and Tombstone, Arizona and Santa Clara, New Mexico*, 17 FCC Rcd 24567 (M.B. 2002).

² The *Notice* identified Mel-Mike Enterprises, Inc. as the licensee of Station KNUW(FM). Duran-Hill, Inc. advises that it is now the licensee of Station KNUW(FM), having acquired the license from Mel-Mike Enterprises, Inc. on July 2, 1999, and consummated on July 6, 1999. See File No. BALH-19990617GP.

³ See *Report and Order* in MM Docket No. 88-526 ("*Change of Community R&O*"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Change of Community MO&O*").

separation of 226 kilometers in this instance.⁴

3. The *Notice/OSC* announced that the Petitioner's reallocation proposal, evaluated pursuant to the FM allotment priorities,⁵ would be preferred over retention of Channel 237A at Douglas. Tombstone, Arizona (population 1,504 persons),⁶ would receive its first aural service (priority three) and would not deprive Douglas, Arizona (population 14,312) of local service (priority four).⁷ As the Petitioner's proposal requires relocation of the transmitter site for Station KCDQ to accommodate its request at Tombstone, gain and loss areas will occur. The reallocation would result in a gain area on United States ("U.S.") territory of 18,321 square kilometers containing a population of 271,500 persons. Also, within the gain region, the reallocation proposal would fulfill allotment priorities (1) and (2). A first full-time aural service would be provided to 1,863 persons in an area of 1,476 square kilometers (priority one) ("white area"); and a second full-time aural reception service would be provided to 814 persons in an area of 2,443 square kilometers (priority two) ("gray area").⁸ The reallocation proposal would also provide a third, fourth and fifth reception service to a combined population of 77,618 persons within a collective area of 6,886 square kilometers. The loss area occurring within the United States consists of 194.1 square kilometers and is unpopulated.

4. As stated in the *Notice/OSC*, Petitioner also requested the substitution of Channel 236C1 for Channel 237C1 at Santa Clara, New Mexico, and modification of the license of Station KNUW(FM) to accommodate its proposal at Tombstone, Arizona. Duran-Hill comments that it does not object to the proposed modification of its license, provided it is reimbursed for costs associated with the frequency change. Petitioner reiterated its intention to reimburse Station KNUW(FM) for costs related to the Class C1 frequency change at Santa Clara.⁹ In view of the absence of a substantial or material question of fact having been raised by Duran-Hill in response to the *Order to Show Cause*, or a demonstration that Station KNUW(FM) would be unduly harmed by the modification of its license to specify operation on Channel 236C1 at Santa Clara, New Mexico, we believe the public interest would be served by granting the Petitioner's modification request. Therefore, we will substitute Channel 236C1 for Channel 237C1 at Santa Clara at the current transmitter site of Station KNUW(FM), and modify its license accordingly.

5. Based upon the information presented, we believe the public interest would be served by granting the Petitioner's proposal. Our analysis is premised on the Petitioner's showing that the substitution of Channel 237C for Channel 237A at Douglas and reallocation of the higher class channel to Tombstone will result in a preferential arrangement of allotments. Fulltime reception service will be

⁴ Coordinates at the licensed site of Station KCDQ at Douglas, Arizona, are 31-22-08 NL and 103-31-45 WL; coordinates at the specified transmitter site at Tombstone, Arizona, are 31-49-00 NL and 110-05-30 WL.

⁵ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).)

⁶ Population figures reported herein were taken from the 2000 U.S. Census.

⁷ Douglas is served locally by Station KRMF(FM), Channel 219B1, Station KDAP-FM, Channel 243A and AM Stations KDAP and KAPR.

⁸ A white area refers to a geographical area that has no full-time aural reception services. A gray area is one that is served by one full-time aural reception service only.

⁹ See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

provided to unserved and underserved areas, and a first local aural service will be provided at Tombstone. Moreover, the reallocation will enable Station KCDQ(FM) to provide an expanded service within its projected 1 mV/m contour. And, Douglas, Arizona, will not be left without local aural service.

6. Channel 237C may be allotted at Tombstone, Arizona, at the Petitioner's specified site at coordinates 31-49-00 NL and 110-05-30 WL, located 11.8 kilometers (7.3 miles) north of the community. Channel 236C1 can be substituted for Channel 237C1 at Santa Clara, New Mexico, at the licensed site of Station KNUW at coordinates 32-51-47 NL and 108-14-28 WL.

7. As Tombstone and Santa Clara, New Mexico, are each located within 320 kilometers (199 miles) of the United States-Mexican border, Mexican concurrence has been requested for Channel 237C at Tombstone as a specially negotiated, restricted allotment towards vacant Channel 237C at Caborca, Sonora, Mexico, as well as to vacant Channel 239B at Santa Cruz, Sonora, Mexico. Additionally, we have notified the Mexican government of the proposed channel change at Santa Clara.¹⁰ However, the consent requests remain outstanding. Therefore, rather than delay Petitioner's opportunity to file its modification application to implement a first local aural transmission service on Channel 237C at Tombstone, we allot that channel at this time. If a construction permit is granted prior to formal concurrence in the Tombstone allotment by the Mexican government, the authorization will include the following condition: "Operation with the facilities specified herein at Tombstone, Arizona, is subject to modification, suspension or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the Agreement, or if specifically objected to by Mexico."¹¹ No change in transmitter site or class of channel is proposed for Station KNUW at Santa Clara, New Mexico. Therefore, we will notify the Mexican government of the channel substitution at Santa Clara upon the filing of an acceptable application to implement the frequency change.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 27, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

| <u>City</u> | <u>Channel No.</u> |
|-------------------------|--------------------|
| Douglas, Arizona | 243A |
| Tombstone, Arizona | 237C |
| Santa Clara, New Mexico | 236C1 |

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cochise Broadcasting, LLC (File No. BLH-19791110AP), IS MODIFIED to specify operation on Channel 237C at Tombstone, instead of Channel 237A at Douglas,

¹⁰ The channel change at Santa Clara, New Mexico, will occur at the existing transmitter site for Station KNUW at coordinates 32-51-47 NL and 108-14-28 WL.

¹¹ The announced condition is a temporary measure. Our engineering analysis has determined that proposed Channel 237C at Tombstone complies with the 1992 US/Mexico FM Broadcasting Agreement, 24 UST 1815, TIAS No. 7697. Once Mexican concurrence has been received, the referenced condition will be removed.

Arizona, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and,
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Duran-Hill, Inc, for Station KNUW(FM) (File No. BLH-19960625KB), Santa Clara, New Mexico, IS MODIFIED to specify operation on Channel 236C1 in lieu of Channel 237C1, subject to the following conditions:

- (a) Nothing contained herein shall be construed to authorize any change in the license of Station KNUW(FM) (File No. BLH-19960625KB), except the channel as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for a construction permit (Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided that the transmission facilities comply in all respects with license BLH-19960625KB, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of an FM or television allotment or an upgrade of existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Cochise Broadcasting, LLC, licensee of Station KCDQ(FM), Douglas, Arizona, is required to submit a rulemaking fee in addition to the fee required for the application to effect the upgrade and change in community of license at Tombstone, Arizona.

12. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

13. For further information concerning the above, contact Nancy Joyner, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau